

**Notice of Allowability**

Application No.

10/550,038

Examiner

Yong Chu

Applicant(s)

GRAVESTOCK ET AL.

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/23/2006.
2. ☒ The allowed claim(s) is/are 1,4,6,8,11 and 13.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|   | 9. <input type="checkbox"/> Other _____.   |

## **DETAILED ACTION**

Claims 2, 3, 5, 7, 9-10, and 12 are cancelled by amendment filed on 23 August 2006. Claim 1 is amended by amendment filed on 28 August 2006. Therefore, claims 1, 4, 6, 8, 11, and 13 are currently pending in the instant application.

### ***Response to Amendment***

The Supplementary Amendment by Applicants' representative John Haberman dated on 23 August 2006 has been entered.

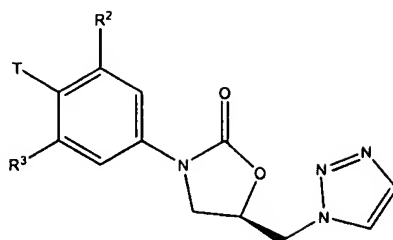
### ***Examiner's amendment***

An examiner's amendment to the record appears. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

In claim 1, line 1 on page 3 of the Supplementary Amendment dated on 23 August 2006, insert --,-- after "(TAa1) "; insert --,-- after "(TAa5) "; insert --and-- after "(TAa7) ".

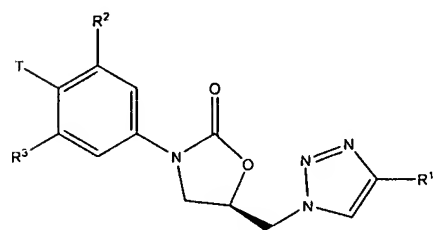
### ***Reasons for Allowance***

The present invention is directed to a compound, a pharmaceutical composition



containing a compound of claim 1 and the methods to make and to use the compound or composition for producing an antibacterial effect in a warm blood animal. The closest prior art of record is co-pending U.S. Patent Application 10/550,039 (Gravestock et al.). The two applications have same assignee.

U.S. Patent Applications 10/550,039 discloses a compound of formula



, wherein  $R^1$  is  $(C_1-C_4)$ alkyl, halogen, hydroxyl, etc..

Application 10/550,039 contains provisional Double Patenting claims over the claims in the instant application, wherein  $R^1$  is H. The Double Patenting rejection over the claims of the instant application is overcome by Applicant's Terminal Disclaimer filed on 23 August 2006. The Terminal Disclaimer has been approved by the Office on 29 August 2006.

Therefore, claims 1, 4, 6, 8, 11, and 13 are allowable.

### ***Telephone Inquiry***

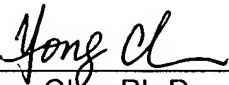
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yong Chu whose telephone number is 571-272-5759.

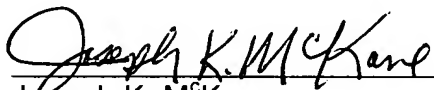
The examiner can normally be reached on 7:00 am - 3:30 pm EST.

Art Unit: 1626

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on 571-272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Yong Chu, Ph.D.  
Patent Examiner  
Art Unit 1626

  
Joseph K. McKane  
Supervisory Patent Examiner  
Art Unit 1626